

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 728 entitled
3 “An act relating to bail reform” respectfully reports that it has considered the
4 same and recommends that the bill be amended by striking out all after the
5 enacting clause and inserting in lieu thereof the following:

6 Sec. 1. 13 V.S.A. § 7551 is amended to read:

7 § 7551. IMPOSITION OF BAIL, SECURED APPEARANCE BONDS, AND
8 APPEARANCE BONDS;~~GENERALLY~~

9 (a) Bonds; generally. A bond given by a person charged with a criminal
10 offense or by a witness in a criminal prosecution under section 6605 of this
11 title, conditioned for the appearance of the person or witness before the court
12 in cases where the offense is punishable by fine or imprisonment, and in
13 appealed cases, shall be taken to the Criminal Division of the Superior Court
14 where the prosecution is pending, and shall remain binding upon parties until
15 discharged by the court or until sentencing. The person or witness shall appear
16 at all required court proceedings.

17 (b) Limitation on imposition of bail, secured appearance bonds, and
18 appearance bonds. No bail, secured appearance bond, or appearance bond may
19 be imposed:

1 (1) ~~No bond may be imposed~~ at the initial appearance of a person
2 charged with a misdemeanor if the person was cited for the offense in
3 accordance with Rule 3 of the Vermont Rules of Criminal Procedure; or

4 (2) upon the temporary release of a person pursuant to Rule 5(b) of the
5 Vermont Rules of Criminal Procedure, or at the initial appearance of a person
6 charged with a violation of a misdemeanor offense that is eligible for
7 expungement pursuant to subdivision 7601(4)(A) of this title.

8 (3) This subsection shall not be construed to restrict the court's ability to
9 impose conditions on such persons to reasonably ~~ensure his or her appearance~~
10 ~~at future proceedings~~ mitigate the risk of flight from prosecution or to
11 reasonably protect the public in accordance with section 7554 of this title.

12 Sec. 2. Rule 3(k) of the Vermont Rules of Criminal Procedure is amended to
13 read:

14 (k) Temporary Release. A law enforcement officer arresting a person shall
15 consult with the prosecuting attorney, and the prosecuting attorney shall
16 contact a judicial officer for determination of temporary release pursuant to
17 Rule 5(b) of these rules without unnecessary delay. The law enforcement
18 officer or prosecuting attorney shall provide the judicial officer with the
19 information and affidavit or sworn statement required by Rule 4(a) of these
20 rules.

1 Sec. 3. 13 V.S.A. § 7554 is amended to read:

2 § 7554. RELEASE PRIOR TO TRIAL

3 (a) Release; conditions of release. Any person charged with an offense,
4 other than a person held without bail under section 7553 or 7553a of this title,
5 shall at his or her appearance before a judicial officer be ordered released
6 pending trial in accordance with this section.

7 (1) The defendant shall be ordered released on personal recognizance or
8 upon the execution of an unsecured appearance bond in an amount specified by
9 the judicial officer unless the judicial officer determines that such a release will
10 not reasonably ~~ensure the appearance of the person~~ mitigate the risk of flight
11 from prosecution as required. In determining whether the defendant presents a
12 risk of ~~nonappearance~~ flight from prosecution, the judicial officer shall
13 consider, in addition to any other factors, the seriousness of the offense
14 charged and the number of offenses with which the person is charged. If the
15 officer determines that ~~such a release will not reasonably ensure the~~
16 ~~appearance of the defendant as required~~ the defendant presents a risk of flight
17 from prosecution, the officer shall, either in lieu of or in addition to the
18 methods of release in this section, impose the least restrictive of the following
19 conditions or the least restrictive combination of the following conditions that
20 will reasonably ~~ensure the appearance~~ mitigate the risk of flight of the
21 defendant as required:

1 (A) Place the defendant in the custody of a designated person or
2 organization agreeing to supervise him or her if the defendant is charged with
3 an offense that is not a nonviolent misdemeanor or nonviolent felony as
4 defined in 28 V.S.A. § 301.

5 (B) Place restrictions on the travel, or association, ~~or place of abode~~
6 of the defendant during the period of release.

7 (C) Require the defendant to participate in an alcohol or drug
8 treatment program. The judicial officer shall take into consideration the
9 defendant's ability to comply with an order of treatment and the availability of
10 treatment resources.

11 (D) ~~Require~~ Upon consideration of the defendant's financial means,
12 require the execution of a secured appearance bond in a specified amount and
13 the deposit with the clerk of the Court, in cash or other security as directed, of
14 a sum not to exceed 10 percent of the amount of the bond, such deposit to be
15 returned upon the appearance of the defendant as required.

16 (E) ~~Require~~ Upon consideration of the defendant's financial means,
17 require the execution of a surety bond with sufficient solvent sureties, or the
18 deposit of cash in lieu thereof.

19 (F) Impose any other condition found reasonably necessary to ~~ensure~~
20 ~~appearance~~ mitigate the risk of flight as required, including a condition
21 requiring that the defendant return to custody after specified hours.

1 (G) Place the defendant in a program of community-based electronic
2 monitoring in accordance with section 7554d of this title.

3 (2) If the judicial officer determines that conditions of release imposed
4 to ~~ensure appearance~~ mitigate the risk of flight will not reasonably protect the
5 public, the judicial officer may impose in addition the least restrictive of the
6 following conditions or the least restrictive combination of the following
7 conditions that will reasonably ensure protection of the public:

8 (A) Place the defendant in the custody of a designated person or
9 organization agreeing to supervise him or her if the defendant is charged with
10 an offense that is not a nonviolent misdemeanor or nonviolent felony as
11 defined in 28 V.S.A. § 301.

12 (B) Place restrictions on the travel, ~~or association, or place of abode~~
13 of the defendant during the period of release.

14 (C) Require the defendant to participate in an alcohol or drug
15 treatment program. The judicial officer shall take into consideration the
16 defendant's ability to comply with an order of treatment and the availability of
17 treatment resources.

18 (D) Impose any other condition found reasonably necessary to
19 protect the public, except that a physically restrictive condition may only be
20 imposed in extraordinary circumstances.

1 (E) ~~If the defendant is a State, county, or municipal officer charged~~
2 ~~with violating section 2537 of this title, the court may suspend~~ Suspend the
3 officer's duties in whole or in part; if the defendant is a State, county, or
4 municipal officer charged with violating section 2537 of this title and the court
5 finds that it is necessary to protect the public.

6 (F) Place the defendant in a program of community-based electronic
7 monitoring in accordance with section 7554d of this title.

8 (G) Place restrictions on the defendant's place of abode during the
9 period of release if the defendant is charged with a listed crime as defined in
10 subdivision 5301(7) of this title or an offense involving sexual exploitation of
11 children in violation of chapter 64 of this title. **IS THIS LIST GETTING**
12 **EXPANDED?!**

13 (3) A judicial officer may order that a defendant not harass or contact or
14 cause to be harassed or contacted a victim or potential witness. This order
15 shall take effect immediately, regardless of whether the defendant is
16 incarcerated or released.

17 (b) Judicial considerations in imposing conditions of release. In
18 determining which conditions of release to impose ~~under~~:

19 (1) In subdivision (a)(1) of this section, the judicial officer, on the basis
20 of available information, shall take into account the nature and circumstances
21 of the offense charged; the weight of the evidence against the accused; the

1 accused's employment; financial resources, including his or her ability to post
2 bail; character and mental condition; length of residence in the community; and
3 record of appearance at court proceedings or of flight to avoid prosecution or
4 failure to appear at court proceedings.

5 (2) ~~subsection~~ In subdivision (a)(2) of this section, the judicial officer
6 ~~shall~~, on the basis of available information, shall take into account the nature
7 and circumstances of the offense charged, the weight of the evidence against
8 the accused, the accused's family ties, employment, ~~financial resources,~~
9 character and mental condition, the length of residence in the community,
10 record of convictions, and record of appearance at court proceedings or of
11 flight to avoid prosecution or failure to appear at court proceedings. Recent
12 history of actual violence or threats of violence may be considered by the
13 judicial officer as bearing on the character and mental condition of the accused.

14 (c) Order. A judicial officer authorizing the release of a person under this
15 section shall issue an appropriate order containing a statement of the conditions
16 imposed, if any, shall inform such person of the penalties applicable to
17 violations of the conditions of release, and shall advise him or her that a
18 warrant for his or her arrest will be issued immediately upon any such
19 violation.

20 (d) Review of conditions.

1 (1) A person for whom conditions of release are imposed and who is
2 detained as a result of his or her inability to meet the conditions of release or
3 who is ordered released on a condition that he or she return to custody after
4 specified hours shall, within 48 hours ~~of~~ following application, be entitled to
5 have the conditions reviewed by a judge in the court having original
6 jurisdiction over the offense charged. A person applying for review shall be
7 given the opportunity for a hearing. Unless the conditions of release are
8 amended as requested, the judge shall set forth in writing or orally on the
9 record a reasonable basis for continuing the conditions imposed. In the event
10 that a judge in the court having original jurisdiction over the offense charged is
11 not available, any Superior judge may review such conditions.

12 (2) A person for whom conditions of release are imposed shall, within
13 five working days ~~of~~ following application, be entitled to have the conditions
14 reviewed by a judge in the court having original jurisdiction over the offense
15 charged. A person applying for review shall be given the opportunity for a
16 hearing. Unless the conditions of release are amended as requested, the judge
17 shall set forth in writing or orally on the record a reasonable basis for
18 continuing the conditions imposed. In the event that a judge in the court
19 having original jurisdiction over the offense charged is not available, any
20 Superior judge may review such conditions.

1 (e) Amendment of order. A judicial officer ordering the release of a person
2 on any condition specified in this section may at any time amend the order to
3 impose additional or different conditions of release, provided that the
4 provisions of subsection (d) of this section shall apply.

5 (f) Definition. The term “judicial officer” as used in this section and
6 section 7556 of this title shall mean a clerk of a Superior Court or a Superior
7 Court judge.

8 (g) Admissibility of evidence. Information stated in, or offered in
9 connection with, any order entered pursuant to this section need not conform to
10 the rules pertaining to the admissibility of evidence in a court of law.

11 (h) Forfeiture. Nothing contained in this section shall be construed to
12 prevent the disposition of any case or class of cases by forfeiture of collateral
13 security ~~where~~ if such disposition is authorized by the court.

14 (i) Forms. The Court Administrator shall establish forms for appearance
15 bonds, secured appearance bonds, surety bonds, and for use in the posting of
16 bail. Each form shall include the following information:

17 (1) The bond or bail may be forfeited in the event that the defendant or
18 witness fails to appear at any required court proceeding.

19 (2) The surety or person posting bond or bail has the right to be released
20 from the obligations under the bond or bail agreement upon written application
21 to the judicial officer and detention of the defendant or witness.

1 (3) The bond will continue through sentencing in the event that bail is
2 continued after final adjudication.

3 (j) Juveniles. Any juvenile between 14 and 16 years of age who is charged
4 with a listed crime as defined in subdivision 5301(7) of this title shall appear
5 before a judicial officer and be ordered released pending trial in accordance
6 with this section within 24 hours ~~of~~ following the juvenile's arrest.

7 Sec. 4. 13 V.S.A. § 7554b is amended to read:

8 § 7554b. HOME DETENTION PROGRAM

9 (a) Definition. As used in this section, "home detention" means a program
10 of confinement and supervision that restricts a defendant to a preapproved
11 residence continuously, except for authorized absences, and is enforced by
12 appropriate means of surveillance and electronic monitoring by the Department
13 of Corrections. The court may authorize scheduled absences such as work,
14 school, or treatment. Any changes in the schedule shall be solely at the
15 discretion of the Department of Corrections. A defendant who is on home
16 detention shall remain in the custody of the Commissioner of Corrections with
17 conditions set by the court.

18 (b) Procedure.

19 (1) At the request of the court, the Department of Corrections, or the
20 defendant, the status of a defendant who is detained pretrial in a correctional
21 facility for lack of bail may be reviewed by the court to determine whether the

1 defendant is appropriate for home detention. At arraignment or after a hearing,
2 the court may order that the defendant be ~~released to~~ placed on the Home
3 Detention Program, providing that the court finds placing the defendant on
4 home detention will reasonably ~~assure his or her appearance in court when~~
5 ~~required~~ mitigate the risk of flight and the proposed residence is appropriate
6 for home detention. In making such a determination, the court shall consider:

7 ~~(1)(A)~~ (A) the nature of the offense with which the defendant is charged;

8 ~~(2)(B)~~ (B) the defendant's prior convictions, history of violence, medical
9 and mental health needs, history of supervision, and risk of flight; and

10 ~~(3)(C)~~ (C) any risk or undue burden to other persons who reside at the
11 proposed residence or risk to third parties or to public safety that may result
12 from such placement.

13 (2) Unless it is contrary to public safety, the court shall order a
14 defendant detained pretrial for lack of bail to be placed on the Home Detention
15 Program if the defendant is charged with committing a misdemeanor that is
16 not:

17 (A) a listed crime as defined in subdivision 5301(7) of this title; or

18 (B) an offense involving sexual exploitation of children in violation
19 of chapter 64 of this title.

20 (3) Upon approving a defendant for the Home Detention Program, the
21 court may waive the preapproved residence requirement and place on the

1 Home Detention Program a person charged with an offense other than a listed
2 crime as defined in subdivision 5301(7) of this title or an offense involving
3 sexual exploitation of children in violation of chapter 64 of this title.

4 (4) A defendant held without bail pursuant to section 7553 or 7553a of
5 this title shall not be eligible for placement on the Home Detention Program.

6 (c) Failure to comply. The Department of Corrections may revoke a
7 defendant's home detention status for an unauthorized absence or failure to
8 comply with any other condition of the Program and shall return the defendant
9 to a correctional facility.

10 (d) Credit for time served. A defendant shall receive credit for a sentence
11 of imprisonment for time served in the Home Detention Program.

12 Sec. 5. 13 V.S.A. § 7575 is amended to read:

13 § 7575. REVOCATION OF THE RIGHT TO BAIL

14 The right to bail may be revoked entirely if the judicial officer finds that the
15 accused has:

16 (1) intimidated or harassed a victim, potential witness, juror, or judicial
17 officer in violation of a condition of release; or

18 (2) ~~repeatedly violated conditions of release; or [Repealed.]~~

19 (3) violated a condition or conditions of release ~~which~~ that constitute a
20 threat to the integrity of the judicial system; or

- 1 (4) without just cause, failed to appear at a specified time and place
2 ordered by a judicial officer; or
3 (5) in violation of a condition of release, been charged with a felony or a
4 crime against a person or an offense ~~like~~ similar to the underlying charge, for
5 which, after hearing, probable cause is found.

1 Sec. 5. EFFECTIVE DATE

2 This act shall take effect on July 1, 2018.

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5 (Committee vote: _____)

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7

Representative _____

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FOR THE COMMITTEE